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**Balboa Baking Co. and Bakery & Confectionery Workers International Union, Local 315, AFL-CIO. Case 21-CA-29574**

November 8, 1995

**SUPPLEMENTAL DECISION AND ORDER**

BY MEMBERS BROWNING, COHEN, AND  
TRUESDALE

On February 28, 1994, the National Labor Relations Board issued a Decision and Order,<sup>1</sup> *inter alia*, directing the Respondent, Balboa Baking Co., its officers, agents, successors, and assigns, to make its unit employees and the Union's trust funds whole, with interest, for its failure to make contractually required health and welfare and pension fund contributions in violation of the National Labor Relations Act. On November 1, 1994, the United States Court of Appeals for the Ninth Circuit entered its judgment enforcing the Board's Order.

A controversy having arisen over the amounts due under the Board's Order, on July 13, 1995, the Acting Regional Director for Region 21 issued a compliance specification and notice of hearing alleging the amount of pension fund contributions due through January 31, 1995, and notifying the Respondent that it should file a timely answer complying with the Board's Rules and Regulations. Although properly served with a copy of the compliance specification, the Respondent failed to file an answer.

By letter dated September 18, 1995, the Region advised the Respondent that if no answer in conformity with the requirements of Section 102.56 of the Board's Rules and Regulations were received by the close of business on Monday, October 2, 1995, summary judgment proceedings would be initiated. Nevertheless, the Respondent filed no answer.

On October 16, 1995, the General Counsel filed with the Board a Motion for Summary Judgment, with exhibits attached. On October 19, 1995, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent again filed no response. The allegations in the motion and in the compliance specification are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

<sup>1</sup> 313 NLRB No. 125 (Feb. 28, 1994) (not reported in Board volumes).

**Ruling on the Motion for Summary Judgment**

Section 102.56(a) of the Board's Rules and Regulations provides that the Respondent shall file an answer within 21 days from service of a compliance specification. Section 102.56(c) of the Board's Rules and Regulations states:

If the respondent fails to file any answer to the specification within the time prescribed by this section, the Board may, either with or without taking evidence in support of the allegations of the specification and without further notice to the respondent, find the specification to be true and enter such order as may be appropriate.

According to the uncontroverted allegations of the Motion for Summary Judgment, the Respondent, despite having been advised of the filing requirements, has failed to file an answer to the compliance specification. In the absence of good cause for the Respondent's failure to file an answer, we deem the allegations in the compliance specification to be admitted as true, and grant the General Counsel's Motion for Summary Judgment.

Accordingly, we conclude that the amount of pension fund contributions due through January 31, 1995, is as stated in the compliance specification and we will order payment by the Respondent of that amount.<sup>2</sup>

**ORDER**

The National Labor Relations Board orders that the Respondent, Balboa Baking Co., San Diego, California, its officers, agents, successors, and assigns, shall pay the Union's pension fund the following amount, plus any additional amounts, as computed in accordance with *Merryweather Optical Co.*, 240 NLRB 1213 (1979): \$1636.30.

Dated, Washington, D.C. November 8, 1995

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Margaret A. Browning, Member

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Charles I. Cohen, Member

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John C. Truesdale, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

<sup>2</sup> The Respondent's health and welfare and pension fund obligations for all periods after January 31, 1995, are reserved for future determination.